UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1998/NGO/51
17 March 1998

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fourth session
Agenda item 9

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

Written statement submitted by Human Rights Watch, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[9 March 1998]

1. Human Rights Watch wishes to raise three important issues regarding the further promotion and encouragement of human rights and fundamental freedoms.

Creation of an international criminal court

2. Even after the establishment of the ad hoc tribunals for the former Yugoslavia and Rwanda, the ongoing atrocities in other parts of the world underscore the need for a permanent international tribunal. The General Assembly has scheduled a diplomatic conference to begin on 15 June 1998, on the treaty to create an ICC. The court will have jurisdiction over genocide, war crimes and crimes against humanity where national courts are either unwilling or unable to undertake prosecution.

3. An effective ICC has the potential to significantly enhance the enforcement of human rights. Not only will the court provide a forum for the victims of the three core crimes, but it will also have the effect of extending the rule of law and bringing national courts up to the standards of international law. Most importantly, a court that can end impunity for the most serious international crimes can also deter the commission of those crimes in the future.

4. The question remains whether the court will have sufficient authority to perform its functions effectively and impartially. Options in the current draft statute for the ICC threaten the independence of the court. According to one proposed provision, the prosecutor would have no power to initiate investigations on his or her own but must wait for a State to file a complaint or for the Security Council to refer a situation to the court. The prosecutor may also be barred from investigating situations being "dealt with" by the Security Council unless he or she has obtained prior approval to do so by the Council. In cases of war crimes and crimes against humanity, the court's effectiveness may be undermined by the requirement that at least three States (the State with custody over the accused, the State where the crime took place and, possibly, the State of the accused's nationality) consent to the court's jurisdiction.

5. The ICC must also be fully empowered to prosecute sexual and gender violence if it is to fulfil its mandate to end impunity for the most serious violations of international law. Toward this end, crimes of sexual and gender violence must explicitly be included in the court's jurisdiction and the ICC statute should contain legal principles and procedures that would facilitate the fair and effective prosecution of these crimes without prejudice to the accused. This is necessary because, as manifested by the records of the ad hoc tribunals, the prosecution of sexual and gender violence presents unique challenges in terms of developing appropriate investigative methods and legal theories, as well as particular difficulties in ensuring the participation and protection of victims and witnesses.

6. We appeal to the members of the Commission on Human Rights to affirm their commitment to an effective, independent and impartial international criminal court.

Strengthening of the thematic and country-specific mechanisms of the Commission on Human Rights

7. The Commission's thematic and country-specific mechanisms represent the heart of the power of the United Nations to draw attention to human rights violations worldwide and to enforce international human rights law. The Commission, over the years, has created a rich and often very effective system of special rapporteurs and working groups, designed to protect victims of human rights abuses and to publicly identify Governments alleged to have committed the abuses. The use of urgent action appeals has permitted rapid resolution of individual cases of abuse, often saving lives. The thematic mechanisms pursue a non-discriminatory approach, ensuring that human rights standards are universally applied. They have conducted on-site investigations in countries which, because of their political power, have never faced United Nations scrutiny, including all five permanent members of the Security Council. Objective reports issued by these mechanisms have raised considerably the price Governments must pay to commit human rights abuses.

8. The work of these special procedures should be promoted and strengthened, as called for in the Vienna Declaration and Programme of Action. The key to their success has been independence from the political pressures which can shape decisions within United Nations bodies. In a December 1997 statement, the High Commissioner for Human Rights, Mary Robinson, noted that such independence was essential to the completion of their two primary tasks of carefully analysing allegations of human rights violations and government information and informing the international community of their findings and making pertinent recommendations. However, the last few years have seen efforts to reduce the independence and effectiveness of the mechanisms by narrowing their mandates or limiting their ability to publicize the results of their work. The Commission has even censored the work of a rapporteur, effectively allowing political considerations to trump the objective fact-finding process.

9. This backsliding process needs to be reversed. Human Rights Watch calls on the Commission to strengthen its rich system of special procedures by:

(a) Placing the mandates of the thematic special rapporteurs and working groups on a permanent footing, i.e. by establishing all thematic mandates as open-ended. This will ensure that the promotion of human rights law as a long-term goal is undisturbed by shifting political currents;

(b) Fostering open and constructive discussion of the results of rapporteurs' investigations during the Commission's session and throughout the year;

(c) Granting the mechanisms more authority to find facts in individual cases;

(d) Encouraging the mechanisms to follow up on previous investigations and allocating resources to make such follow-up possible;

(e) Encouraging the High Commissioner for Human Rights to coordinate efforts aimed at systematic implementation of the mechanisms' recommendations;

(f) Looking to the reports of thematic mechanisms as an objective means of determining whether a country merits scrutiny under item 10 of the Commission's agenda;

(g) Barring Member States from serving on the Commission if they refuse to cooperate with the work of United Nations human rights mechanisms.

The role of ad hoc international criminal tribunals in delivering justice to victims of conflict-related sexual violence

10. Human Rights Watch remains deeply concerned about the inability of the International Criminal Tribunals for Rwanda and the former Yugoslavia to deliver substantive justice to the thousands of women who endured brutal acts of sexual violence during the two conflicts. Women victims of sexual violence have repeatedly expressed concern that stigmatization of rape victims makes them particularly vulnerable to secondary victimization within their communities if they are identified. Nonetheless, both tribunals have failed to implement sufficient measures to protect the identity of witnesses who come forward to speak with investigators in the field and give testimony at the tribunals. Furthermore, fears raised by inadequate protection for witnesses are reinforced by the failure of international forces or government authorities to apprehend alleged war criminals, many of whom remain at large, wielding political power and well positioned to retaliate against witnesses and their families. Such impunity cannot be permitted.

11. Additionally, Human Rights Watch is also concerned about lack of access to justice and discriminatory laws which have contributed to the obstacles Rwandan and Bosnian women face in participating in the post-conflict rebuilding process. Even as they take on heightened responsibilities, particularly after the loss of their husbands, brothers, fathers and sons to the conflicts, they continue to face discrimination in their access to property or financial resources, social stigmatization resulting from rape, deteriorating physical health and intensifying poverty. Rwandan women face direct economic difficulties as a result of discriminatory customary laws. Because Rwandan women are unable to inherit property absent explicit designation as beneficiaries, thousands of widows and orphaned daughters have no legal claim to their late husbands' or fathers' property. As a result, many women have been left destitute, struggling to rebuild their lives and raise their children.